

DOC. # 5204
ADOPTED 6/29/89COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement (the "Agreement") made as of _____, 1989, by and between SOUTH BOSTON LIMITED PARTNERSHIP, a limited partnership organized and existing under Chapter 109 of the Massachusetts General Laws, as amended, of which MICHAEL A. SEIDMAN and JAMES M. BLETZER are the General Partners (the "Developer") and the BOSTON REDEVELOPMENT AUTHORITY, a public body, politic and corporate organized and existing under Chapter 121B of the Massachusetts General Laws, as amended, ("Chapter 121B") and acting hereunder in accordance with its powers pursuant to Chapter 121B, the Acts of 1960, Chapter 652, as amended, and other applicable statutes and ordinances (the "Authority"). Collectively, the Developer and the Authority are hereinafter referred to as the "Parties".

PRELIMINARY STATEMENT

The Developer proposes to construct a certain condominium project on properties located at Tudor Street, West Sixth Street, and West Seventh Street in the South Boston neighborhood of the City of Boston. Such project will consist of approximately one hundred ten (110) condominium units, of which approximately ninety eight (98) units will be for sale (the "For Sale Units") and a minimum of twelve (12) units will be reserved for rental (the "Rental Units"). Collectively, the beforementioned properties and the described project shall be hereinafter referred to as the "Tudor Place Condominium", notwithstanding its or their eventual name or names. In conjunction with the Tudor Place Condominium, Phases One and Two as hereinafter described, the Developer agrees to provide to the Authority as a voluntary contribution the greater of, one hundred thousand dollars (\$100,000), or five percent (5%) of the Net Sale Proceeds, as that term is hereinafter defined, of the For Sale Units, not to exceed in any event an aggregate payment under this Agreement of one hundred fifty thousand dollars (\$150,000), for disbursement or expenditure by the Authority in connection with educational, recreational or community activities or projects, housing developments primarily for low or moderate income persons and families, all to be located within or to the benefit the South Boston neighborhood, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows.

A. Phase One Contribution. In connection with Phase One of the Tudor Place Condominium, which will contain approximately seventy one (71) condominium units, of which approximately fifty nine (59) will be For Sale Units and the remaining twelve (12) shall be Rental Units, the Developer shall pay to the Authority a total of forty eight thousand dollars (\$48,000), at such times and in such sums as follows:

1. The sum of twenty thousand dollars (\$20,000) promptly after the conveyance of the last of the first twenty (20) of the

For Sale Units in Phase One.

2. The sum of twenty eight thousand dollars (\$28,000) promptly after issuance of a Certificate of Occupancy by the Inspectional Services Department of the City of Boston ("ISD") relative to the last For Sale Unit in Phase One.

The sums referred to in Sections A.1 and A.2 above shall be payable to the Authority notwithstanding any reduction in the number of For Sale Units that are eventually constructed by the Developer below fifty nine (39) units.

B. Phase Two Contribution. In connection with Phase Two of the Tudor Place Condominium, which will contain approximately thirty nine (39) For Sale Units, the Developer shall pay to the Authority a total of fifty thousand dollars (\$50,000), at such times and in such sums as follows:

1. The sum of twenty five thousand dollars (\$25,000) promptly after the conveyance of the last of the first twenty (20) For Sale Units in Phase Two.

2. The sum of twenty five thousand dollars (\$25,000) promptly after the issuance of a Certificate of Occupancy by ISD relative to the last of the For Sale Units in Phase Two.

The sums referred to in Sections B.1 and B.2 above shall be payable to the Authority notwithstanding any reduction in the number of For Sale Units that are eventually constructed by the Developer below thirty nine (39) units.

C. Final Contribution; Financial Report; Statement; and Payment. Within thirty (30) business days from and after the conveyance of the last of the For Sale Units in the Tudor Place Condominium, whether such unit is part of the Phase One or Phase Two, the Developer shall provide to the Authority a complete and accurate accounting with regard to all costs incurred for, and all revenues derived from, the Tudor Place Condominium, prepared in accordance with generally accepted accounting principles and verified by an independent Certified Public Accountant of the Developer's choice (the "Financial Report"). Along with the Financial Report, the Developer shall submit a statement to the Authority which sets forth a calculation of the Net Sale Proceeds, as hereinafter defined, derived from the For Sale Units (the "Statement"). If in accordance with the Statement five percent (5%) of the Net Sale Proceeds exceeds one hundred thousand dollars (\$100,000), less the Community Services Credit as hereinafter defined, the Developer shall pay to the Authority such excess amount, not to exceed an aggregate payment of one hundred fifty thousand dollars (\$150,000) under this Agreement (the "Final Contribution").

For purposes of this Agreement, the following terms shall have the meaning respectively ascribed:

1. "Net Sale Proceeds" shall mean that amount determined by deducting from all revenues received from the sale of the For

Sale Units "Total Project Costs", which shall mean all bona fide costs incurred in the development of both the For Sale Units and the Rental Units in the Tudor Place Condominium, Phases One and Two, including without limitation, (a) costs incurred directly in connection with the acquisition of the properties for the project (not part of any construction financing); (b) amounts paid under construction contracts; (c) amounts paid to architectural and engineering consultants; (d) amounts paid for borings, surveys, tests, historical and environmental investigations; (e) cost of insurance during construction; (f) costs of site preparation; (g) interest during construction; (h) costs of fees, permits and licenses; (i) developers' fees authorized under construction loan agreements; (j) costs of legal, accounting, planning, appraisal and other consulting services, placement fees, third party brokers' commissions, recording fees, title insurance premiums and charges, and (k) other costs and charges incurred directly in connection with the construction and financing of the project.

2. "Community Services Credit" shall mean the sum of two thousand dollars (\$2,000) which the Authority acknowledges that the Developer has expended for recreational activities in South Boston, in particular a one thousand dollar (\$1,000) donation in 1989 to the South Boston Boys' and Girls' Club and one thousand dollars (\$1,000) that was contributed in connection with the 1989 Evacuation Day Parade.

Payment to the Authority of the Final Contribution, if any, shall be made when the Financial Report and the Statement are submitted to the Authority.

D. Disbursement or Expenditure of Contributions. The proceeds of all contributions received by the Authority under this Agreement shall be held and disbursed or expended by the Authority, in its sole discretion, only for educational, recreational or community activities or projects, or housing developments primarily for low or moderate income persons or families, all to be located within, or to be for the benefit of, the South Boston Neighborhood (collectively, the "Contribution Purposes"). Such proceeds shall be deposited by the Authority in an interest bearing account with the First Trade Union Savings Bank, whose principal office is located in the City of Boston, or such other financial institution if deemed appropriate by the Authority. All interest earned on the account shall be disbursed or expended also for the Contribution Purposes. It is the intention of the Parties that this Agreement shall not constitute the creation of a trust, constructive or otherwise, and the only obligations of the Authority hereunder is to accept and disburse and expend funds, as it determines in its sole discretion consistent with the Contribution Purposes. The Authority shall not be liable or accountable to the Developer for such disbursements or expenditures.

E. Building Permits; Contribution Obligations. If a building permit is not granted by ISD for any Phase or part of the Tudor Place Condominium, or if construction of any Phase is abandoned after a building permit is obtained prior to the commencement of

Substantial Construction, as hereinafter defined, or if a building permit lapses and is not renewed, then the Developer shall not be obligated to make any outstanding and unpaid contributions with respect to the Phases, as described in Sections A, B and C of this Agreement. As used herein, the term "Substantial Construction" shall mean the excavation of the project site or the construction of any above or below grade structures, but shall not include the demolition of any structures or portions thereof now existing on the project site.

F. Limitation on Liability. Neither the Developer, any general or limited partner thereof, or their respective successors and assigns shall be personally or individually liable under this Agreement beyond the extent of its or their particular interest in the Tudor Place Condominium. The liability for the contributions hereunder shall be binding on the Developer's successors and assigns.

G. Notice of Transfer of Project. For so long as any obligations of the Developer under Sections A, B and C of this Agreement shall remain outstanding, the Developer shall give the Authority notice of any sale or transfer of the right to construct the Tudor Place Condominium, or Phase thereof, if prior to completion, the name and address of the successor or assign to, or of, the Developer, and a copy of the sale or assignment instrument which shall include a specific assumption of the obligations hereunder by such successor or assign.

H. Miscellaneous Provisions.

1. Amendments; Law to be Applied. No amendment to this Agreement shall be effective unless in writing and executed by the Parties. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and sets forth the entire agreement among the Parties. This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties and their respective successors, assigns and legal representatives. For the purposes of this Agreement, the term "successors and assigns" shall not include any bona fide third party purchasers for value of condominium units in the Tudor Place Condominium.

2. Notices, Etc. All notices, reports, statements, payments or other communications required or permitted under this Agreement (collectively, "Communications") must be in writing and given by hand delivery, by courier, or registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to the Authority:

Director's Office
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201

with a copy to:

Chief General Counsel
Boston Redevelopment Authority
33 Third Avenue, Building 33
Charlestown Navy Yard
Charlestown, MA 02129

If to the Developer:

South Boston Limited Partnership
c/o

with a copy to:

Either party may change the persons or addresses to which communications must be sent by notice in accordance with this section.

3. Captions. The captions of the sections in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

SOUTH BOSTON LIMITED PARTNERSHIP

By: _____

Michael A. Seidman, General
Partner

By: _____

James M. Bletzer, General
Partner

BOSTON REDEVELOPMENT AUTHORITY

By: _____

Stephen Coyle, Director

MEMORANDUM

JUNE 29, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

ANTHONY WILLIAMS, ASSISTANT DIRECTOR FOR
NEIGHBORHOOD HOUSING AND DEVELOPMENT

FROM: LINDA BOURQUE, ASSISTANT DIRECTOR FOR NEIGHBORHOOD
PLANNING AND ZONING
BRIAN BYRNES, PLANNER

SUBJECT: COMMUNITY BENEFITS PLAN: A VOLUNTARY CONTRIBUTION
OF SOUTH BOSTON HOUSING LIMITED PARTNERSHIP

EXECUTIVE
SUMMARY:

Staff recommends approval of this Community Benefits Plan. South Boston Housing Limited Partnership, developers of one hundred and ten residential dwelling units known as Tudor Place, offers a Community Benefits Plan which includes a contribution of one hundred thousand (\$100,000) dollars or five percent (5%) of the project's profits not to exceed one hundred and fifty thousand (\$150,000) dollars, whichever is greater.

The Community Benefits Plan relates to a voluntary commitment made by Messrs. Seidner and Bletzer, General Partners of the South Boston Housing Limited Partnership, to area residents when proposing to develop Tudor Place, a one hundred and ten (110) unit residence on certain parcels of land located on Tudor Street, West Seventh Street and West Sixth Street in South Boston. Messrs. Seidner and Bletzer have also agreed to enter into a Voluntary Housing Agreement which include developing twelve (12) on-site Section 8 rental units for low- and moderate-income families.

On March 10, 1989 the BRA voted to recommend approval with provisos ten zoning variances. The voted further authorized the Director to enter into an affordable housing agreement and that all approvals be subject to the Authority's approval of the Community Benefits Plan.

Michael A. Seidner and James M. Bletzer volunteered to enter into a Community Benefits Plan Agreement with the Boston Redevelopment Authority with payments being made in specified installments into an escrow account at the First Trade Union Savings Bank. The Boston Redevelopment Authority will be the escrow agent.

The payment installments will be made as follows:

- o Twenty thousand (\$20,000) dollars upon the closing of the sale of the twentieth (20) unit in Phase I;

- o Twenty-eight thousand (\$28,000) dollars upon the issuance of the certificate of occupancy for the last for sale unit of Phase I;
- o Twenty-five thousand (\$25,000) dollars upon the closing of the sale of the twentieth (20) unit in Phase II; and
- o Twenty-five thousand (\$25,000) dollars upon the issuance of the last certificate of occupancy of Phase II.
- o Additional funds due, if any, shall be paid in their entirety within thirty (30) days after the closing of the sale of the last unit of Phase II.

Two thousand (\$2,000) dollars have been contributed: one thousand (\$1,000) dollars to the South Boston Boys and Girls Club; and one thousand (\$1,000) dollars to the Evacuation Day Parade Committee.

BRA staff recommends approval of this Community Benefits Plan.

An appropriate vote follows:

VOTED: That the Authority in accordance with its vote of March 10, 1988 authorizes the Director to enter into a Community Benefits Plan (draft attached) with Michael A. Seidner and James M. Bletzer, general partners of the South Boston Housing Limited Partnership.

